

# **TITLE 326 AIR POLLUTION CONTROL BOARD**

## **FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-8 AND DRAFT RULE #00-139(APCB)**

### **DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING ACID DEPOSITION CONTROL**

#### **PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 326 IAC 21-1-1, Acid Deposition Control, to incorporate by reference changes to Title 40 of the Code of Federal Regulations, Parts 72 through 78 and has scheduled a public hearing/meeting before the air pollution control board (board) for consideration of preliminary adoption of these rules.

**CITATIONS AFFECTED:** 326 IAC 21-1-1.

**AUTHORITY:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11.

#### **STATUTORY REQUIREMENTS**

IC 13-14-9-8 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that there is no anticipated benefit from the first and second public comment periods, IDEM may forego these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for preliminary adoption. Two (2) opportunities for public comment (at the public hearings prior to preliminary and final adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by IC 13-14-9-8, the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for preliminary adoption, and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-8.

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:

(A) an adoption or incorporation by reference of a federal law, regulation, or rule that:

(i) is or will be applicable to Indiana; and

(ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;

(B) a technical amendment with no substantive effect on an existing Indiana rule; or

(C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in IC 13-14-9-7(a)(2) from:

(A) exposing the rule to diverse public comment under section IC 13-14-9-3 or IC 13-14-9-4;

(B) affording interested or affected parties the opportunity to be heard under IC 13-14-9-3 or IC 13-14-9-4; and

(C) affording interested or affected parties the opportunity to develop evidence in the record collected under IC 13-14-9-3 and IC 13-14-9-4.

## **BACKGROUND**

Article 21 was added to the air pollution control board rules in 1994 in order to have the legal authority to create, administer, and enforce an acid rain permitting program that is consistent with the provisions of Title IV of the Clean Air Act (CAA). Article 21 incorporates by reference the federal rules dealing with the acid rain program and defines the permitting authority as the commissioner of the department of environmental management.

This rulemaking notice proposes to incorporate by reference several revisions to existing rules that have been published in the Federal Register since October 1997. The proposed changes include:

- 62 FR 55461 (October 24, 1997), final rule on the Acid Rain Program; Revisions to Permits, Allowance System, Sulfur Dioxide Opt-ins, Continuous Emission Monitoring, Excess Emissions, and Appeal Procedures:

On October 24, 1997, U.S. EPA published in the Federal Register a final rule, Acid Rain Program; Revisions to Permits, Allowance System, Sulfur Dioxide Opt-ins, Continuous Emission Monitoring, Excess Emissions, and Appeal Procedures, that amends various portions of the Acid Rain Program rules under 40 CFR 72 through 40 CFR 78. The amendments were promulgated to streamline and improve the permitting, excess emissions, and appeal procedures rules, as well as minor aspects of the monitoring rule. The revisions streamline the Acid Rain Program and reduce the burden on utilities, state and local permitting authorities and U.S. EPA, while still ensuring achievement of the Acid Rain Program's goals of reducing sulfur dioxide and nitrogen oxides emissions. The final rule also revised the sulfur dioxide allowances for one (1) unit.

- 63 FR 18837 (April 16, 1998), final rule on the Acid Rain Program; Revisions to Sulfur Dioxide Opt-ins:

On April 16, 1998, U.S. EPA published in the Federal Register a final rule, Acid Rain Program; Revisions to Sulfur Dioxide Opt-ins, that amends 40 CFR 74, Opt-Ins. The final rule was amended to promote participation in the Title IV opt-in program by clarifying existing regulations, allowing a limited exception to the general rule of one (1) designated representative for all affected units at a source, revising the conditions under which U.S. EPA could cancel current-year allowance allocations, and allowing thermal energy plans to be effective on a quarterly basis.

- 63 FR 57498 through 63 FR 57514 (October 27, 1998), final rule Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone:

On October 27, 1998, U.S. EPA published in the Federal Register a final rule, Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone. As part of this rulemaking, U.S. EPA included amendments to the definitions under 40 CFR 72 and amendments to the continuous emission monitoring rule under 40 CFR 75. The continuous emission monitoring rule revisions included new requirements for alternative monitoring provisions for low emitting units.

- 63 FR 68400 (December 11, 1998), final rule Revisions to the Permits and Sulfur Dioxide Allowance System Regulations Under Title IV of the Clean Air Act; Allowance Transfer Deadline and Signature Requirements:

On December 11, 1998, U.S. EPA published in the Federal Register a final rule Revisions to the Permits and Sulfur Dioxide Allowance System Regulations Under Title IV of the Clean Air Act; Allowance Transfer Deadline and Signature Requirements. This action amended certain provisions in the permitting and allowance trading rules for the purpose of improving the operation of the Allowance Tracking System and the allowance market.

- 64 FR 28564 through 28672 (May 26, 1999), final rule Acid Rain Program; Continuous Emission Monitoring Rule Revisions:

On May 26, 1999, U.S. EPA published in the Federal Register a final rule, Acid Rain Program; Continuous Emission Monitoring Rule Revisions. Many of the revisions are minor technical revisions based on comments received by U.S. EPA following initial implementation of 40 CFR 75. Based on experience gained in the early years of the Acid Rain Program, companies developed a number of suggestions to simplify and streamline the monitoring process without sacrificing data quality. U.S. EPA also amended quality assurance requirements based on gaps identified by U.S. EPA during evaluation of the initial implementation of 40 CFR 75. U.S. EPA also included several minor technical changes in order to maintain uniformity within the rule and to clarify various provisions.

## **FINDINGS**

The commissioner of IDEM has prepared findings regarding rulemaking on amendments to 326 IAC 21-1-1 as required by federal rule. These findings are prepared under IC 13-14-9-8 and are as follows:

- (1) This rule is the direct adoption of federal requirements that are applicable to Indiana and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.
- (2) Indiana is required by federal law to adopt amendments to 326 IAC 21-1-1 as established by the United States Environmental Protection Agency.
- (3) The public will benefit from prompt adoption of this rule, because the provisions of the acid rain program will benefit the environment by preventing the serious, adverse effects of acidic deposition on natural resources, ecosystems, materials, visibility, and public health.
- (4) Persons potentially affected by this rule will have two (2) opportunities to comment on it at the first and second public hearings held in accordance with IC 13-14-9-8.
- (5) I have determined that under the specific circumstances pertaining to this rule, there would be no benefit to the environment or to persons to be regulated or otherwise affected by this rule from the first and second public comment periods.
- (6) The draft rule is hereby incorporated into these findings.

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Lori F. Kaplan  
Commissioner  
Indiana Department of Environmental Management

## **ADDITIONAL INFORMATION**

Additional information regarding this action may be obtained from Roger Letterman, Office of Air Management, (317) 232-8342 or (800) 451-6027, press 0 and ask for extension 2-8342 (in Indiana).

## DRAFT RULE

SECTION 1. 326 IAC 21-1-1 IS AMENDED TO READ AS FOLLOWS:

### **326 IAC 21-1-1 Incorporation of federal regulations**

**Authority:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15; IC 13-17

Sec. 1. (a) The air pollution control board incorporates by reference the provisions of 40 CFR 72 through 40 CFR 78, 61 FR 59142, 61 FR 67111, 61 FR 68821, and 62 FR 3463, **62 FR 55461 (October 24, 1997), 63 FR 18837 (April 16, 1998), 63 FR 57498 through 63 FR 57514 (October 27, 1998), 63 FR 68400 (December 11, 1998) and 64 FR 28564 through 28672 (May 26, 1999)\*** for purposes of implementing an acid rain program that meets the requirements of Title IV of the Clean Air Act **and to incorporate monitoring, record keeping, and reporting requirements for nitrogen oxide emissions to demonstrate compliance with nitrogen oxides emission reduction requirements.**

(b) ~~The term "permitting authority" shall mean the commissioner of the department of environmental management, and the term "administrator" shall mean the administrator of the U.S. EPA.~~ **following definitions apply throughout this section:**

(1) **"Administrator"** means the administrator of the U.S. EPA.

(2) **"Permitting authority"** shall mean the commissioner of the department of environmental management.

(c) If the provisions or requirements of 40 CFR 72 through 40 CFR 78, 61 FR 59142, 61 FR 67111, 61 FR 68821, and 62 FR 3463, **62 FR 55461 (October 24, 1997), 63 FR 18837 (April 16, 1998), 63 FR 57498 through 57514 (October 27, 1998), 63 FR 68400 (December 11, 1998) and 64 FR 28564 through 28672 (May 26, 1999)\*** conflict with or are not included in the provisions of 326 IAC 2-7 and 326 IAC 2-8, the provisions and requirements of 40 CFR 72 through 40 CFR 78, 61 FR 59142, 61 FR 67111, 61 FR 68821, and 62 FR 3463, **62 FR 55461 (October 24, 1997), 63 FR 18837 (April 16, 1998), 63 FR 57498 through 63 FR 57514 (October 27, 1998), 63 FR 68400 (December 11, 1998) and 64 FR 28564 through 28672 (May 26, 1999)\*** shall apply and take precedence.

\*Copies of the Code of Federal Regulations (CFR) and the Federal Register (FR) referenced may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 21-1-1; filed May 25, 1994, 11:00 a.m.: 17 IR 2283; filed Dec 1, 1997, 4:30 p.m.: 21 IR 1285*)

### ***Notice of First Meeting/Hearing***

*Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2, and IC 13-14-9, notice is hereby given that on August 2, 2000 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room B, Indianapolis, Indiana, the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 21-1-1.*

*The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral*

*statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996 Indiana Register, page 1710 (19 IR 1710).*

*Additional information regarding this action may be obtained from Roger Letterman, Office of Air Management, (317) 232-8342 or (800) 451-6027, press 0 and ask for extension 2-8342 (in Indiana). If the date of this hearing is changed, it will be noticed in the Change of Notice section of the Indiana Register.*

*Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:*

*Attn: David Weir, ADA Coordinator  
Indiana Department of Environmental Management  
100 North Senate Avenue  
P.O. Box 6015  
Indianapolis, Indiana 46206-6015*

*or call (317) 233-1785. TDD: (317) 232-6565. Speech and hearing impaired callers may also contact the agency via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.*

*Copies of these rules are now on file at the Office of Air Management, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana and are open for public inspection.*